Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fifth Chamber)

14 January 2016*

(Agriculture — Export refund — Poultrymeat — Implementing Regulation fixing the refund at EUR 0 — Action for annulment — Regulatory act not entailing implementing measures — Whether directly concerned — Admissibility — Article 3(3) of Regulation (EU) No 182/2011 — Obligation to state reasons — Article 164(3) of Regulation (EC) No 1234/2007 — Legitimate expectations)

In Case T-397/13,

**Tilly-Sabco**, established in Guerlesquin (France), represented by R. Milchior, F. Le Roquais and S. Charbonnel, lawyers,

applicant,

supported by

**Doux SA**, established in Châteaulin (France), represented by J. Vogel, lawyer,

intervener,

v

**European Commission**, represented by D. Bianchi and K. Skelly, acting as Agents,

defendant,

APPLICATION for annulment of Commission Implementing Regulation (EU) No 689/2013 18 July 2013 fixing the export refunds on poultrymeat (OJ 2013 L 196, p. 13),

THE GENERAL COURT (Fifth Chamber),

composed of A. Dittrich (Rapporteur), President, J. Schwarcz and V. Tomljenović, Judges,

Registrar: S. Bukšek Tomac, Administrator,

having regard to the written procedure and further to the hearing on 22 April 2015,

gives the following

* Language of the case: French.

## Judgment[1]

### Background to the dispute

1 The applicant, Tilly-Sabco, is a company whose activities include, in particular, the export of deep-frozen whole chickens to the countries of the Middle East.

2 By the present action, the applicant seeks annulment of a measure adopted by the European Commission, whereby the latter fixed at zero the amount of the export refunds on poultrymeat for three categories of deep-frozen whole chickens.

3 The principles governing export refunds are laid down in Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products ('the Single CMO Regulation') (OJ 2007 L 299, p. 1), as amended.

4 Chapter, III, 'Exports', of Part III, 'Trade with third countries', includes Section II, 'Export refunds', devoted to such refunds. Article 162 of that regulation provides that, to the extent necessary to enable exports on the basis of world market quotations or prices and within the limits resulting from agreements concluded in accordance with Article 218 TFEU, the difference between those quotations or prices and prices in the European Union may be covered by export refunds for the products in, inter alia, the poultrymeat sector.

5 According to Article 164(1) of Regulation No 1234/2007, export refunds are to be the same for the whole of the European Union. According to paragraph 2 of that article, refunds are to be fixed by the Commission and may be fixed at regular intervals or, for certain products, by invitation to tender. That paragraph also provides that, except where fixed by tender, the list of products on which an export refund is granted and the amount of export refunds are to be fixed at least once every three months.

…

10 By Implementing Regulation (EU) No 689/2013 of 18 July 2013 fixing the export refunds on poultrymeat (OJ 2013 L 196, p. 13; 'the contested regulation'), the Commission, in particular, fixed at zero the amount of export refunds for three categories of deep-frozen chickens, the codes of which are 0207 12 10 9900, 0207 12 90 9190 and 0207 12 90 9990.

11 The amount of the refunds for the other six products — essentially chicks — set out in the annex to the contested regulation, which had been fixed at zero by Commission Implementing Regulation (EU) No 1056/2011 of 20 October 2011 fixing the export refunds on poultrymeat (OJ 2011 L 276, p. 31), was not amended.

12 According to the annex to the contested regulation, the destinations concerned by the export refunds are, in particular, countries in the Middle East.

13 The contested regulation also repealed Regulation No 360/2013, which up to then had fixed the level of the refunds for the sector in question.

…

1 — Only the paragraphs of this judgment which the Court considers it appropriate to publish are reproduced here.

**Procedure and forms of order sought**

17 By application lodged at the Court Registry on 6 August 2013, the applicant brought the present action.

18 By separate document, lodged at the Court Registry on the same date, the applicant made application for interim relief, claiming, in essence, that the President of the Court should suspend the operation of the contested regulation pending the adoption of the final decision. By order of 29 August 2013, the President of the Court granted the French Republic leave in intervene in the proceedings for interim relief in support of the form of order sought by the applicant. The President of the Court dismissed the application for interim relief by order of 26 September 2013 in *Tilly-Sabco* v *Commission* (T-397/13 R, EU:T:2013:502), and costs were reserved.

19 By document registered at the Court Registry on 15 November 2013, Doux SA, a company also active in the export of deep-frozen whole chickens from the European Union to the countries of the Middle East, sought leave to intervene in support of the form of order sought by the applicant in the main proceedings. By order of 7 April 2014, the President of the Fifth Chamber of the Court granted leave to intervene.

20 The applicant requested that certain confidential material in the reply and the annexes thereto should not be communicated to the intervener. The communication of those pleadings and annexes to the intervener was limited to the non-confidential version produced by the applicant. The intervener raised no objections in that regard.

21 The intervener lodged its statement in intervention within the prescribed period and the Commission submitted its observations on that statement in intervention, also within the prescribed period. The applicant did not lodge observations on that statement in intervention within the prescribed period.

22 Upon a proposal from the Judge-Rapporteur, the Court decided to open the oral procedure and, in the context of the measures of organisation of procedure provided for in Article 64 of the Rules of Procedure of the General Court of 2 May 1991, requested the parties to reply in writing to certain questions and requested the Commission to produce certain documents. The parties complied with those requests within the prescribed period.

23 The applicant claims that the Court should:

— declare the action admissible;

— annul the contested regulation;

— order the Commission to pay the costs.

24 The intervener claims that the Court should:

— declare the application for annulment of the contested regulation brought by the applicant admissible;

— annul the contested regulation;

— order the Commission to pay the costs.

25 The Commission contends that the Court should:

— dismiss the action as inadmissible or unfounded;

— reserve the costs.

**Law**

26 In support of the action, the applicant raises five pleas in law, alleging, first, breach of essential procedural requirements and abuse of process; second, procedural irregularity and lack of competence; third, failure to state reasons; fourth, infringement of the law or a manifest error of assessment; and, fifth, breach of the principle of legitimate expectations.

27 Although it has not raised a formal objection of inadmissibility, the Commission claims that the action is inadmissible. It maintains that the applicant has no standing to bring proceedings, since, in the Commission's view, the conditions laid down in the fourth paragraph of Article 263 TFEU are not satisfied.

I — *Admissibility*

28 The applicant, supported by the intervener, claims that the contested regulation is a regulatory act which is of direct concern to it and does not entail implementing measures, in accordance with the third situation referred to in the fourth paragraph of Article 263 TFEU. In the alternative, it claims that the regulation is of direct and individual concern to it, within the meaning of the second situation referred to in the fourth paragraph of Article 263 TFEU.

29 It is appropriate to begin by examining whether the contested regulation is a regulatory act which is of direct concern to the applicant and does not entail implementing measures.

A — *The existence of a regulatory act*

30 As regards, first of all, whether the contested regulation is a regulatory act within the meaning of the third situation referred to in the fourth paragraph of Article 263 TFEU, it must be recalled that 'regulatory act' for the purposes of that provision must be understood as covering all acts of general application apart from legislative acts (judgment of 3 October 2013 in *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, ECR, EU:C:2013:625, paragraph 61; order of 6 September 2011 in *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, T-18/10, ECR, EU:T:2011:419, paragraph 56; and judgment of 25 October 2011 in *Microban International and Microban (Europe)* v *Commission*, T-262/10, ECR, EU:T:2011:623, paragraph 21).

31 As the applicant correctly observes, an act is of general application if it applies to objectively determined situations and if it produces legal effects with respect to categories of persons envisaged in general and in the abstract (order of 8 April 2008 in *Saint-Gobain Glass Deutschland* v *Commission*, C-503/07 P, ECR, EU:C:2008:207, paragraph 71, and judgment in *Microban International and Microban (Europe)* v *Commission*, cited in paragraph 30 above, EU:T:2011:623, paragraph 23). In the present case, it must be observed that the contested regulation is of general application, as its purpose is to fix the amount of the export refunds which apply to a category of operators envisaged in general and in the abstract, namely all operators exporting the products in question to the countries concerned by the regulation.

32 Since the contested regulation was not adopted according to either the ordinary legislative procedure or a special legislative procedure within the meaning of Article 289(1) to (3) TFEU (see, to that effect, order of 4 June 2012 in *Eurofer* v *Commission*, T-381/11, ECR, EU:T:2012:273, paragraph 44), it is a regulatory act within the meaning of the third situation referred to in the fourth paragraph of Article 263 TFEU.

33 The Commission acknowledges, moreover, that the contested regulation is a regulatory act.

B — *Direct concern to the applicant*

34 There is no reason why the concept of direct effect, as required in the case of regulatory acts in the context of the third situation referred to in the fourth paragraph of Article 263 TFEU, should be interpreted differently from the way in which it is interpreted in the context of the second situation referred to in the fourth paragraph of Article 263 TFEU, namely in the case of acts which are of 'direct and individual' concern to a natural or legal person (see, to that effect, Opinion of Advocate General Kokott in *Telefónica* v *Commission*, C-274/12 P, ECR, EU:C:2013:204, point 59).

35 The 'direct concern' condition requires, first, that the contested measures must directly affect the legal situation of the individual and, second, that it must leave no discretion to the addresses of the measure, who are entrusted with the task of implementing it, such implementation being purely automatic and resulting solely from the contested rules without the application of other intermediate rules (see judgment in *Microban International and Microban (Europe)* v *Commission*, cited in paragraph 30 above, EU:T:2011:623, paragraph 27 and the case-law cited).

36 In the present case, the contested regulation has a direct legal effect on the applicant, in that the applicant can no longer benefit from export refunds having a positive amount for its exports of deep-frozen whole chickens to the countries of the Middle East. As the amount of the export refunds was fixed at zero by the contested regulation, that regulation leaves no discretion in that respect to the national authorities entrusted with the task of allocating the refunds. Even if an export refund were granted by a national authority, it would automatically be at an amount equal to zero, in so far as the contested regulation leaves no discretion to the national authorities that would allow them to fix an export refund at a positive amount.

37 The applicant is therefore directly concerned by the contested regulation.

38 The Commission confirmed, moreover, in answer to a question in that regard put at the hearing, that it did not dispute that the measure was of direct concern to the applicant, which was duly noted in the minutes of the hearing.

C — *The existence of an act not entailing implementing measures*

39 The concept of a regulatory act which does not entail implementing measures, within the meaning of the third situation referred to in the fourth paragraph of Article 263 TFEU, must be interpreted in the light of that provision's objective, which, as is clear from its origin, consists in preventing an individual from being obliged to infringe the law in order to have access to a court. Where a regulatory act directly affects the legal situation of a natural or legal person without requiring implementing measures, that person could be denied effective judicial protection if he did not have a direct legal remedy before the Courts of the European Union for the purpose of challenging the legality of that regulatory act. In the absence of implementing measures, natural or legal persons, although directly concerned by the act in question, would be able to obtain a judicial review of that act only after having infringed its provisions, by pleading that those provisions are unlawful in proceedings initiated against them before the national courts (judgment of 19 December 2013 in *Telefónica* v *Commission*, C-274/12 P, ECR, EU:C:2013:852, paragraph 27).

40 The Court of Justice has also held that where a regulatory act entails implementing measures, judicial review of compliance with the European Union legal order is ensured irrespective of whether those measures were adopted by the European Union or the Member States. Natural or legal persons who are unable, because of the conditions governing admissibility laid down in the fourth paragraph of Article 263 TFEU, to challenge a regulatory act of the European Union directly before the Courts of

the European Union are protected against the application to them of such an act by the ability to challenge the implementing measures which the act entails (judgment in *Telefónica* v *Commission*, cited in paragraph 39 above, EU:C:2013:852, paragraph 28).

41 The question whether a regulatory act entails implementing measures should be assessed by reference to the position of the person pleading the right to bring proceedings under the third situation referred to in the fourth paragraph of Article 263 TFEU. It is therefore irrelevant whether the act in question entails implementing measures with regard to other persons. In addition, reference should be made exclusively to the subject matter of the action (judgment in *Telefónica* v *Commission*, cited in paragraph 39 above, EU:C:2013:852, paragraphs 30 and 31).

42 While it is apparent from the case-law cited in paragraph 39 above that the concept of regulatory acts not entailing implementing measures must be interpreted in the light of that provision's objective, which is to ensure effective judicial protection, that does not mean that that concept must be examined exclusively in the light of that objective. In fact, it is not possible to adjudicate on an objective test of admissibility, namely the condition that there must be a regulatory act which entails implementing measures, by answering only the question whether the applicant has effective judicial protection.

43 In the light of the wording of the third situation referred to in the fourth paragraph of Article 263 TFEU, it is also necessary to consider whether the regulatory act in question 'entails' measures for its implementation. That means that only measures which the organs or bodies of the EU or the national authorities adopt in the normal course of events can constitute implementation measures. If, in the normal course of events, the organs or bodies of the EU and the national authorities do not adopt any measure in order to implement the regulatory act and to specify the consequences of that act for each of the operators concerned, that regulatory act does not 'entail' any implementing measures.

44 It should be emphasised that, according to the wording of the third situation referred to in the fourth paragraph of Article 263 TFEU, it is not sufficient that the regulatory act 'may entail' implementing measures, but it is necessary that it 'entails' implementing measures.

45 The wording of the third situation referred to in the fourth paragraph of Article 263 TFEU in language versions of the FEU Treaty other than the French version, such as the English version (does not entail implementing measures) or the German version (keine Durchführungsmaßnahmen nach sich ziehen), confirms that the measures in question must be measures that follow naturally from the regulatory act. It is not sufficient that an operator may be able, in a contrived manner, to oblige the administration to adopt a measure that would be open to appeal, because such a measure is not a measure that the regulatory act 'entails'.

46 It is therefore appropriate to examine whether, in the normal course of events, measures will be adopted by any authorities in order to implement the contested regulation.

47 According to Article 167(1) of Regulation No 1234/2007, export refunds are to be granted only on application and on presentation of an export licence. Article 4(1) of Commission Regulation (EC) No 612/2009 of 7 July 2009 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 2009 L 186, p. 1) provides that, except in the case of exports of goods, entitlement to the refund is to be conditional upon the presentation of an export licence with advance fixing of the refund. As the Commission emphasises, the application must be presented to the national authorities and the export licence with advance fixing of the refund is also issued by the national authorities.

48 Furthermore, according to Article 46(1) of Regulation No 612/2009, refunds are to be paid only on a specific application by the exporter and by the Member State in whose territory the export declaration is accepted.

49 It should also be pointed out that, according to Article 1(2)(b)(ii) of Commission Regulation (EC) No 376/2008 of 23 April 2008 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products (OJ 2008 L 114, p. 3), a licence is to be presented in case of export of 'products referred to in Article 162(1) of Regulation (EC) No 1234/2007 for which an export refund has been fixed, including at an amount of zero or an export tax has been fixed'.

50 In addition, according to Article 1(4) of Regulation No 376/2008, 'for the purposes of the system of export licences and advance fixing certificates referred to in paragraph 1, when a refund has been fixed for products not listed in Annex II, Part II and an operator does not apply for the refund that operator shall not be required to present a licence or certificate for the export of the products concerned'.

51 In the present case, it is common ground between the parties that there was no obligation to obtain an export licence for the products in question in order to be able to export them without receiving export refunds.

52 The Commission confirms that, even where the amount of the export refunds is fixed at zero by a regulation, there is 'nothing to prevent' an operator from submitting an application for an export licence, because, according to Article 7(1) of Regulation No 376/2008, when an export licence is issued, the right to export is established and the operator is protected from risk in the event that the European Union should decide to impose an additional tax, a prohibition on exports or any other similar measure.

53 However, the relevant question for the purpose of determining whether the contested regulation 'entails' implementing measures is not whether there is nothing to prevent the operators concerned from applying for an export licence with advance fixing of the export refunds, but whether, in the normal course of events, operators will submit such applications.

54 In that regard, it should be observed that, since there is no requirement to obtain an export licence, and since the export refunds that may be fixed will in any event be at an amount equal to zero, in the normal course of events, the operators concerned will not submit applications to the national authorities for export licences with advance fixing of export refunds.

55 The applicant is correct to emphasise, in the reply, that the risk of the imposition of an export tax, or indeed of a prohibition on exports between the date of application for an export licence and the export itself, was theoretical in 2013 in the sector concerned. Since the products in question had benefited, until the adoption of the contested regulation, from export refunds of a positive amount, it was not conceivable that the Commission would impose an export tax or even a prohibition on exports in the near future. The Commission, moreover, does not assert that such a risk existed.

56 Furthermore, the Commission acknowledges that in the poultrymeat sector there were no applications for export licences after the refunds had been fixed at zero by the contested regulation.

57 In so far as the Commission emphasises that applications for export licences were presented in the cereal and sugar sectors in spite of the fact that the amount of the export refunds had been fixed at zero, it should be observed that the Commission provides no detail that would permit an assessment of the reasons why operators in other sectors presented such applications and of whether the situation in the poultry meat sector was comparable. The Commission acknowledged at the hearing, moreover, that there were no recent examples of such a practice.

58 Because the amount of the export refunds was fixed at zero by the contested regulation, and as there was no obligation to present an export licence in order to be able to export the products in question, in the normal course of events, no application for export licences will be presented to the national

authorities. In the absence of applications for export licences with advance fixing of the export refunds, the national authorities will not adopt any measure in order to implement the contested regulation. Those authorities will therefore not adopt such measures in the normal course of events. There will therefore be no measure specifying the consequences which the contested regulation has with regard to the various operators concerned.

59 It would be incorrect to consider that the contested regulation entails implementing measures solely because operators may submit applications for export licences with advance fixing of the export refunds and thus require the national authorities to adopt measures to implement the contested regulation, namely the grant of export refunds at an amount equal to zero. Operators have no reason to act thus and will not do so in the normal course of events.

60 The Commission accepts that it might seem excessive to require an operator to lodge an application for an export licence solely in order to obtain access to a court. It also admits, in answer to a written question to that effect put by the Court, that, 'to a certain extent', fixing the amount of export refunds at zero in a regulation constitutes an act which, in the normal course of events, will not entail the adoption of any act by an authority in order to implement that regulation, since an operator has no a priori need of any act in order to be able to export without refunds.

61 The Commission nonetheless maintains that, in the present case, the implementing act that would not normally be requested could have been requested precisely in order to obtain access to a court. In its submission, the applicant could have applied for an export licence which would have entitled it to an export refund at an amount of EUR 0 and which would have been able, after adducing evidence of having exported the products mentioned in that licence, to have challenged before the national courts the grant of an export refund equal to zero, relying on the alleged illegality of the contested regulation.

62 However, it is precisely the fact that an application is lodged with a national authority for the sole purpose of being able to have access to a court that implies that that application will not be submitted in the normal course of events. As the national authority has no choice other than to fix the amount of the refunds at zero, an exporter can have no interest in having the refunds fixed by the national authority in those circumstances, except in order to secure, in an 'artificial' manner, the adoption of an act that could form the subject matter of an action.

63 It follows from the foregoing that the contested regulation does not 'entail' implementing measures.

64 That result is not called into question by the Commission's argument that it would be paradoxical if the admissibility of an action were to depend on the level of the refunds and if the regulation had to be considered not to entail implementing measures where the amount of the refunds was fixed at zero, whereas when that amount was fixed at a level above zero the challengeable act is the implementing measure adopted at national level.

65 The question whether a regulatory act entails implementing measures must be examined in the light of all the circumstances of the case. It should be borne in mind that the question whether a regulatory act entails implementing measures should be assessed by reference to the position of the person pleading the right to bring proceedings (see paragraph 41 above). It is therefore possible that the same regulation may be challenged before this Court by certain operators, because it is of direct concern to them and does not entail implementing measures with regard to them, while it does entail implementing measures with regard to other operators. *A fortiori*, it cannot be precluded that a regulation fixing the amount of refunds at zero does not entail implementing measures, whereas a 'similar' regulation fixing refunds at a positive amount does entail such measures.

66 It is therefore unnecessary to examine the merits of the applicant's arguments that, even if it had applied for an export licence with advance fixing of the export refunds, it would in any event have been able to challenge before a national court the act adopted at national level granting export refunds at an amount equal to zero.

67 Nor is it necessary to examine the arguments whereby the applicant claims that it is individually concerned by the contested regulation.

68 It follows from all of the foregoing that the action is admissible, because the contested regulation is a regulatory act which is of direct concern to the applicant and entails no implementing measures.

II - *Substance*

A — *First plea, alleging breach of essential procedural requirements and misuse of powers*

69 The first plea is divided into two parts. The first part alleges failure to comply with the procedure laid down in Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ 2011 L 55, p. 13) and the second part alleges a contradiction between the procedure adopted and the citations in the measure in question.

1. First part, alleging failure to comply with the procedure laid down in Regulation No 182/2011.

70 The applicant, supported by the intervener, maintains that, by presenting the draft of the contested regulation only during the meeting of the management committee, the Commission did not comply with the rules laid down in Article 3(3) of Regulation No 182/2011. It maintains that the Commission did not provide the members of the management committee with all the material that would have afforded them 'early and effective opportunities to examine the draft implementing act and express their views', within the meaning of Article 3(3) of Regulation No 182/2011.

71 The Commission disputes the arguments put forward by the applicant and the intervener.

72 It should be observed, first of all, that the applicant initially indicated that the first plea alleged only an abuse of process.

73 However, by the first part of the first plea, the applicant claims in essence that there has been a breach of essential procedural requirements, in that when consulting the management committee the Commission did not observe the procedure laid down in Article 3(3) of Regulation No 182/2011. At the hearing, the applicant confirmed that in reality the first part of the first plea alleged breach of essential procedural requirements, which was duly noted in the minutes of the hearing.

(a) The alleged breach of essential procedural requirements

74 According to Article 195 of Regulation No 1234/2007, the Commission is to be assisted by the management committee. According to Article 3(2) of Regulation No 182/2011, the committee is to be composed of representatives of the Member States and chaired by a representative of the Commission.

75 Article 3(3) of Regulation No 182/2011 is worded as follows:

'The chair shall submit to the committee the draft implementing act to be adopted by the Commission.

Except in duly justified cases, the chair shall convene a meeting not less than 14 days from submission of the draft implementing act and of the draft agenda to the committee. The committee shall deliver its opinion on the draft implementing act within a time limit which the chair may lay down according to the urgency of the matter. Time limits shall be proportionate and shall afford committee members early and effective opportunities to examine the draft implementing act and express their views.'

76 As the Commission has explained, the procedure for consultation of the management committee was as follows. On 16 July, or two days before the meeting of the management committee, the Commission sent to the members of the management committee by email a document entitled 'EU Market situation for poultry' ('the document submitted to the management committee').

77 During the morning session of the meeting of the management committee held on 18 July 2013, the Commission presented the situation on the poultry market. In the afternoon, when that meeting continued, after 1 p.m., the Commission presented the draft of the contested regulation to the management committee. The document in question was a standard regulation in which only the figures had been updated. More particularly, it was a photocopy of the previous regulation fixing the export refunds in which the references to the amounts of the refunds had been crossed out in pencil.

78 The draft of the contested regulation was then put to the vote. The Director General of DG Agricultural and Rural Development completed the self-certification formalities on the same day, at 3.46 p.m., so that the contested regulation could be published in the Official Journal on the following day and enter into force and be applicable with immediate effect.

79 The Commission also explained that it had followed that practice when fixing the export refunds since 1962.

80 In addition, it observed that the procedure and the time limits had not been disputed by the Member States in the present case.

81 The Commission asserts that the underlying reasons for that practice are to avoid leaks, disruption of the market and speculation that would jeopardise the financial interests of the European Union. It observes that the distribution of draft measures after 1 p.m. is justified by the fact that, on the basis of Article 16 of Regulation No 376/2008, no application for a licence valid on the same day can be lodged after 1 p.m. The Commission submits that those rules are absolutely essential and that any advance knowledge of a reduction in the amount of the refunds would enable operators, by obtaining advance fixing of the refunds, to gain huge sums, as a result of pure speculation, to the detriment of the EU budget, and also lead to serious disruption of the markets. The Commission also claims that operators are informed of the measures before publication, by the various trade bodies which are in contact with their national administrations.

82 The applicant maintains that the Commission's arguments do not justify the presentation of the draft of the contested regulation only during the meeting and that it cannot be presumed that there was a risk of leaks.

83 The Court must therefore examine whether the way in which the Commission proceeded when adopting the contested regulation is consistent with the rules laid down in Article 3(3) of Regulation No 182/2011.

84 It is appropriate to begin by examining the question whether, in principle, Regulation No 182/2011 permits a draft regulation to be presented to the management committee while it is sitting.

85 The first sentence of the second subparagraph of Article 3(3) of regulation No 182/2011 provides for a period of at least 14 days between the date of submission of the draft implementing act and the date of the meeting of the management committee, which must be observed 'except in duly justified cases'.

86 It is therefore possible to derogate from the rule that draft regulations are to be submitted 14 days before the meeting of the management committee and Regulation No 182/2011 does not specify a minimum period that must be observed. Owing to the words 'except in duly justified cases', at the beginning of the first sentence of the second subparagraph of Article 3(3) of Regulation No 182/2011, that first sentence does not preclude a draft regulation being submitted to the management committee while it is sitting.

87 The second sentence of the second subparagraph of Article 3(3) of Regulation No 182/2011 provides that the management committee is to deliver its opinion on the draft implementing measure 'within a time limit which the chair may lay down according to the urgency of the matter'. The applicants asserted, in essence, at the hearing that that form of words meant that there must always be a time limit and that that time limit cannot be zero; consequently, it must be precluded that the regulation to be adopted can be submitted while the management committee is sitting.

88 In that regard, the Commission correctly submitted at the hearing that even where the draft measure to be adopted is submitted while the management committee is sitting, the members of that committee still have 'a moment' to examine the text. Even where a draft regulation is submitted while the committee is sitting, the vote does not take place at the same time as the draft is submitted, but always after a certain time, a few minutes or a few quarter hours at least. The fact that the draft measure is submitted during the course of the meeting does not therefore mean that the management committee has no time in which to express its views.

89 Nor does the third sentence in the second subparagraph of Article 3(3) of Regulation No 182/2011, which states that 'time limits shall be proportionate and shall afford committee members early and effective opportunities to examine the draft implementing act and express their views', preclude the draft regulation being presented to the management committee while it is sitting. Where a period of several minutes or, as the case may be, several quarter hours between the presentation of the draft regulation to the management committee and the taking of the vote is sufficient to afford the committee members effective opportunities to examine the draft implementing act and express their views, such a period may be 'proportionate' within the meaning of the third sentence of the second subparagraph of Article 3(3) of Regulation No 182/2011.

90 The requirement that the committee members must have an 'early' opportunity to examine the draft must be read in the light of the fact that the time limit must, according to the same provision, be 'proportionate'. The word 'early' does not necessarily mean that the draft regulation must be presented to the management committee before the date of the meeting. Where a period of several minutes or, as the case may be, several quarter hours is 'proportionate' in the light of the circumstances, that presentation must be considered to be a presentation made 'early' within the meaning of the third sentence of the second subparagraph of Article 3(3) of Regulation No 182/2011.

91 It follows from the foregoing that Article 3(3) of Regulation No 182/2011 does not preclude, in principle, a draft regulation being presented during the meeting.

92 The Court must therefore examine whether there was sufficient justification for the failure, when the contested regulation was adopted, to observe the 14-day time limit that must be observed 'except in duly justified cases' and whether the presentation of the draft implementing act during the meeting of the management committee afforded the members of the management committee effective opportunities to examine the draft implementing measure and express their views.

93 In that regard, it should be borne in mind, first of all, that the Commission sent the members of the management committee, by email, two days before the date of the meeting, the document submitted to the management committee, namely a presentation concerning the situation on the poultrymeat market. That document, which was produced by the applicant in the annex to the application, enabled the Member States to acquaint themselves with the market situation and to form their own

opinion in that regard. In the light of the content of that document, the period that elapsed between the time when that document was sent and the date of the meeting was sufficient to allow the members of the management committee to become acquainted with the information contained in the document, to form an opinion of the market situation and to prepare any questions to be put to the Commission on the subject at the meeting of the management committee. It should be observed that Article 3(3) of Regulation No 182/2011 does not prescribe any particular time limit for the sending of such documents. The time limit of 14 days prescribed in the first sentence of the second subparagraph of Article 3(3) of Regulation No 182/2011 applies only to the presentation of the draft implementing act and the draft agenda.

94 It should also be observed that it is apparent from Annex 9 to the application that the invitation and agenda relating to the meeting of the management committee of 18 July 2013 are dated 3 July 2013. The applicant does not claim that the period of 14 days between the date of submission of the draft agenda and the date of the meeting of the management committee, laid down in the first sentence of the second subparagraph of Article 3(3) of Regulation No 182/2011, was not observed in this instance.

95 The members of the management committee were aware, on receiving the agenda of the management committee, that the situation on the poultrymeat and eggs market would be presented during the morning session of the meeting and that, after 1 p.m., the management committee would be invited to give its opinion on a draft regulation fixing the export refunds on poultrymeat. That allowed sufficient time for the members of the management committee, if they wished to do so, to contact the interested operators or trade associations, in order to seek their views on the market situation and the amount of the export refunds which they considered appropriate, or to obtain information on the market situation from publicly accessible sources.

96 Next, the Commission's presentation concerning the market situation, during the morning session of the meeting of the management committee of 18 July 2013, afforded the Member States the opportunity to have an exchange of views and to ask the Commission for any clarification which they desired concerning the market situation.

97 Last, the Commission presented the draft of the contested regulation during the afternoon session of the meeting. As regards that draft, it should be borne in mind that it consisted of a standard regulation in which only the figures had been updated (see paragraph 77 above). It is apparent from Annex 10 to the application that the draft of the contested regulation, as presented to the management committee, was a photocopy of the previous regulation, in which the new amounts of refunds proposed had been added by hand. It is also apparent from that document that, apart from the updating of the amount of the refunds, only purely procedural amendments were made, such as the updating of the date and number of the regulation.

98 The only information that was added during the afternoon session of the meeting of 18 July 2013, in addition to the information of which the members of the management committee were aware, was therefore the precise amount of the refunds proposed by the Commission. There was thus no need for the time limit fixed by the chair of the management committee to be sufficient to study the text of the regulation, but only to become aware of the fact that the amount proposed by the Commission was zero and to form an opinion on that proposal.

99 In the light of the fact that the members of the management committee had sufficient time before the date of the meeting to form an opinion on the market situation, and that the market situation had also been presented during the morning session of the meeting, they were in a position to give an immediate opinion on the Commission's proposal to fix the amount of the refunds at zero.

100 Nor was there anything to prevent the Member States from requesting further explanations from the Commission and asking it to justify in greater detail its proposal to fix the amount of the export refunds at zero. The Member States also had the opportunity to address the meeting in order to

explain to the other members of the management committee that they considered that the fixing of the amount of the export refunds at zero was not justified in the light of the market situation. The applicant does not claim that a member of the management committee wished to contribute to the discussion and was prevented from doing so on the ground that there was insufficient time; and the Commission emphasises that it did not set a quota on the time during which the Member States could address the meeting and that, as usual, it answered all the questions put to it.

101 It should also be observed that, as the Commission has explained, without being contradicted on that point by the applicant, no member of the management committee raised any objection concerning the fact that the draft of the contested regulation was presented only during the meeting or concerning the time that elapsed between the presentation of the draft of the contested regulation and its being put to the vote.

102 At the hearing, the applicant asserted that, when the Member States received the information on the market situation two days before the meeting of the management committee, they might have considered that, in view of developments on the market, the Commission would propose to maintain the amount of the export refunds at the same level as in the previous regulation. In the applicant's submission, the addition of the figure zero during the meeting of the management committee changed everything.

103 In that regard, it should be observed that, if a member of the management committee considers, in the light of the presentation of the market situation communicated two days before the date of the meeting, that the development of the market situation does not lead to an amendment of the amount of the export refunds, and that he learns during the afternoon session of the meeting of the management committee that the Commission proposes to fix the amount of the refunds at zero, he has the opportunity, under Article 3(4) of Regulation No 182/2011, to suggest amendments and, in particular, that the amount of the refunds fixed by the previous regulation should remain unaltered.

104 Although the applicant asserts that the Member States did not have time to coordinate themselves, it does not claim that a Member State objected to the draft of the contested regulation being put to the vote. It should be observed that it is for the Member States, and not for the applicant, to decide whether they need more time have the opportunity to coordinate themselves. Furthermore, each Member State had the opportunity to address the meeting and explain to the other Member States the reasons why it considered that the fixing of the export refunds at zero was not justified, thus inviting the other Member States to vote against the draft of the contested regulation.

105 The applicant maintains that the fact that self-certification could be effected by the Director General of DG Agriculture and Rural Development at 3.46 p.m. on the same day shows that there was no serious discussion of the export refunds.

106 In that regard, it should be pointed out that the applicant cannot require the members of the management committee to devote a specific time to discussion.

107 It is for the Commission to explain the market situation and to afford the members of the management committee the opportunity to put questions and to express their views on the draft implementing regulation. Where only a few Member States wish to ask a question or to address the meeting in order to present their observations, the discussion may be completed very quickly. That does not mean that the members of the management committee did not have effective opportunities to express their views, within the meaning of Article 3(3) of Regulation No 182/2011. It should also be borne in mind that the market situation had been presented and discussed during the morning session of the meeting of the management committee and that it was only the precise amount of the refunds proposed by the Commission that was discussed during the afternoon session.

108 It follows from the foregoing that, in the present case, the period between the presentation of the draft of the contested regulation and the taking of the vote was sufficient to afford the members of the management committee with effective opportunities to examine that draft and express their views.

109 Next, it should be recalled that, according to the second sentence of the second subparagraph of Article 3(3) of Regulation No 182/2011, the time limit within which the management committee is to deliver its opinion is to be laid down by the chair of that committee, according to the urgency of the matter.

110 At the hearing, the applicant claimed, in essence, that, unlike the situation giving rise to the judgment of 14 January 1987 in *Germany* v *Commission* (278/84, ECR, EU:C:1987:2), on which the Commission has relied, in the present case there was no significant disturbance of the market that might justify the draft of the contested regulation only being presented during the meeting.

111 In that regard, it should be pointed out that the Commission has indeed not claimed that there was urgency in the sense that the market situation was such as to require an urgent amendment of the amount of the refunds. Such a situation would, moreover, have allowed the Commission, under Article 164(2) of Regulation No 1234/2007, to adjust the amount of the refunds in the intervening period between two dates on which they were scheduled to be fixed, and to do so without the assistance of the management committee.

112 By the contested regulation, the Commission fixed the amount of the export refunds in accordance with the 'regular intervals' requirement, and the fact that on 3 July 2013 it placed that item on the agenda of the meeting of 18 July 2013 shows that it did not consider that there was a particularly urgent need to adjust the amount of the refunds.

113 However, as the Commission emphasises, there is no inconsistency between the fact that the export refunds are to be fixed at regular intervals and the fact that, when the time has come to fix those refunds, there is a need to act quickly and with extreme urgency.

114 It follows from the wording of the second sentence of the second subparagraph of Article 3(3) of Regulation No 182/2011 that it is for the chair of the management committee, and therefore for a representative of the Commission, to decide on urgency. The Court's review is limited to examining the existence of a manifest error of assessment or a misuse of powers (see, to that effect, judgment in *Germany* v *Commission*, cited in paragraph 110 above, EU:C:1987:2, paragraph 13).

115 It should be stated that the procedure followed by the Commission is designed to avoid any risk linked with the possibility of leaks. The fact that the draft regulation containing the figures was communicated only after 1 p.m. on the day on which the management committee voted on that draft regulation and the contested regulation was adopted precluded any risk that an operator, after learning that the Commission was going to propose a reduction of the amount of the refunds, would lodge applications for export licences with advance fixing of the export refunds for which the old amounts of the refunds would be applicable. As the Commission has explained, it has a legitimate interest in avoiding such speculation, which could adversely affect the financial interests of the European Union. The procedure followed by the Commission ensures that the regulation fixing the new amount of the refunds can enter into force on the day following the meeting of the management committee and that the precise amount proposed is communicated only at a time when no application for refunds valid for the same day can any longer be lodged.

116 It should also be noted that the Commission observed, in answer to a written question about the normal practice which it followed, that its services generally submitted their proposal concerning the amount of the export refunds to their superiors only two days before the meeting of the management committee and that the superiors' decision was generally taken on the eve of the meeting of the management committee. It follows that the Commission was unable to send the draft of the contested

regulation containing the proposed amounts at the same time as it sent the draft of the contested regulation, as it had not yet taken a decision on the amounts which it would propose. The Commission has a legitimate interest in ensuring that, even when the export refunds are fixed at a regular interval, it takes into account the most recent figures available up to the date of the meeting of the management committee. It is apparent from the document submitted to the management committee that the Commission took very recent figures into account. Thus, that document contains a table relating to export licences for the week of 8 to 14 July 2013, which shows that the figures were updated a few days before the meeting of the management committee.

117 The Commission's chosen method of itself fixing its proposal as to the amount of the export refunds only on the eve of the meeting of the management committee cannot be criticised. Nor has the applicant claimed that the Commission ought to have adopted its own decision on its proposal at an earlier stage.

118 It should also be observed that it would make no sense to send a draft of the contested regulation without the proposed amounts. As the contested regulation corresponded to a standard regulation in which only the figures had been updated, the Member States were aware in advance of the text of the contested regulation, apart from the amounts of the refunds.

119 The time limit for the opinion of the management committee was therefore proportionate and the Commission's assessment of urgency is not vitiated by a manifest error of assessment or a misuse of powers.

120 It follows from all of the foregoing that the Commission has not infringed Article 3(3) of Regulation No 182/2011.

…

B — *Second plea, alleging breach of procedure and lack of competence* …

201 As regards the argument that the Commission's Rules of Procedure do not formally provide that a sub-delegation made in 2004 would still be valid in 2013, as the person to whom the authority was delegated and the person who delegated it would have changed, the following should be noted.

202 An authority or a sub-delegation is not conferred on a natural person, but on a person occupying an office or post, namely the Member of the Commission responsible for a specific field or the Director-General of a specific Directorate General. Thus, it remains valid where the person occupying that office or post has changed.

203 Contrary to what the applicant appears to maintain, there is no need for the Commission's Rules of Procedure to make express provision that a specific sub-delegation should remain valid after a change in the person to whom the authority was delegated and the person who delegated it. The possibility of conferring authority or a sub-delegation is intended to relieve the College of Commissioners or the Member of the Commission in question of the task of taking decisions that do not need to involve the College or the Member of the Commission in question. The purpose of the decision to confer an authority or a sub-delegation is to allocate powers within the Commission and does not amount to proof that confidence is placed in a particular natural person. In the absence of a specific decision to the contrary, no power is conferred ad personam. In the present case, the authorisation and sub-delegation decisions are addressed to the Member of the Commission responsible for agriculture and rural development and the Director-General of DG Agriculture and Rural Development and not to particular persons designated by name.

…

On those grounds,

THE GENERAL COURT (Fifth Chamber)

hereby:

1. **Dismisses the action;**

2. **Order Tilly-Sabco to bear its own costs, including those relating to the proceedings for interim relief;**

3. **Orders the European Commission to bear its own costs, including those relating to the proceedings for interim relief;**

4. **Orders Doux SA to bear its own costs;**

5. **Orders the French Republic to bear the costs which it incurred as intervener in the proceedings for interim relief.**

Dittrich Schwarcz Tomljenović

Delivered in open court in Luxembourg on 14 January 2016.

[Signatures]